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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 25 2010

SRC 07 800 26458

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a civil engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and a new letter from the petitioner's current employer. For the reasons discussed below, we are satisfied that the petitioner has established his eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Civil Engineering from Pennsylvania State University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, civil engineering, and that the proposed benefits of his work, increased flood protection and reduced soil erosion, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet

the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As stated above, the petitioner obtained his Ph.D. from Pennsylvania State University in May 2006. The petitioner then began working for [redacted] in Mississippi. The petitioner is currently working for Ayres Associates in Colorado.

[redacted] the petitioner's advisor at Pennsylvania State University who is currently at Colorado State University, discusses the importance of the petitioner's area of research given the damage caused by landslides and debris flows and environmental concerns about landscape erosion. [redacted] asserts that the petitioner evaluated the reliability of a representative flood, termed an "effective flood," and discovered that the effective flood is not a suitable substitute for all flood events. As a result, a full range of floods should be considered when making an assessment. [redacted] further asserts that the petitioner "is the first researcher in the world to successfully include realistic flood production processes in a long-term landscape erosion model." According to [redacted], this model "not only considers a full spectrum of flood events instead of a single event but also generates streamflow by different natural mechanisms." Finally, [redacted] states:

> [The petitioner] used his state-of-the-art model to explore the geomorphic role of the streamflow that is produced by groundwater. Erosion by groundwater discharge is commonly neglected by most scientists and engineers when they conduct erosion analyses. In this study, [the petitioner] found that groundwater can greatly modify the topography over long periods, and it can trigger landslides along steep valley sides. He also demonstrated that groundwater is probably an important consideration for previously unrecognized circumstances. This finding is very important because it totally changes our understanding of groundwater's geomorphic role.

[redacted] a senior water resources engineer at [redacted], states that the petitioner worked for the company's Multi-Hazard Flood Map Modernization project. [redacted] explains that alluvial fan floods are quite severe, exhibiting unpredictable flow paths and high velocity. These floods can result in erosion and sediment deposits, threatening hillside building sites. Thus, the Federal Emergency Management Agency (FEMA) faces a challenge in accurately determining alluvial flood risks. [redacted] explains that, unlike one-dimensional conventional models, the petitioner's model simulates overland flow two-dimensionally.

The record also contains several letters from independent references. The mere submission of letters from independent references is insufficient; however, we must examine the content of these letters. Included among these letters is a letter from [redacted], an agricultural engineer with the U.S. Department of Agriculture (USDA), who affirms that the petitioner's model "is superior to other erosion models not only because it is able to simulate most physical process in the land surface." While the record would have been bolstered by evidence that the USDA is considering adopting the petitioner's model, we acknowledge [redacted]'s high opinion of the petitioner's model.

Significantly, the petitioner also submitted letters from independent references that not only knew of the petitioner prior to being contacted for a reference but who have utilized his model. [redacted], an associate professor at the University of Colorado, affirms that he has no personal ties with the petitioner but has quoted his work. [redacted] explains that the petitioner's models go "way beyond previous models," including those of the USDA. [redacted] concludes that the petitioner's model "provides some useful lessons for extending our model ('CHILD')."

Other letters come from beyond Colorado. [redacted], an associate professor at Durham University in the United Kingdom, affirms that the petitioner is "well known in his field even among those who have no personal contact with him, including myself." [redacted] confirms that the petitioner's model "is the first one in the world using a temporally and spatially varying discharge to drive erosion processes." [redacted] concludes that the petitioner's model "points out the direction to improve other erosion models" including influencing [redacted] own work.

Similarly, [redacted], a senior research scientist at SpecPro in Mississippi, also confirms that the petitioner's work has influenced his own research, stating more specifically that the petitioner's model "is very useful to my watershed modeling practices in support of military installation compliance as well as long-term watershed planning and management."

an assistant professor at the University of North Carolina at Charlotte, also confirms that the petitioner's published research "have been having an influence on my research direction by providing model support for field observations on the importance of groundwater-surface water interactions on landscape form."

Finally, [redacted], an assistant professor at Tulane University, asserts that he uses the petitioner's research in a course he teaches. Moreover, the record contains the syllabus for a course taught by [redacted] at a Buffalo university that includes an article by the petitioner.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the alien employment certification process. Therefore, on the basis of the evidence submitted, the

petitioner has established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.